



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

February 12, 1991

Mr. J. Kirk Brown
General Counsel
Texas Department of Criminal Justice
Institutional Division
P. O. Box 99
Huntsville, Texas 77342-0099

OR91-087

Dear Mr. Brown:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 10328.

You have received a request for copies of all written documentation relating to two promotion screening boards. You inform us that the boards are a part of the employee promotion and selection procedures used by your division. You assert that the following types of information requested are excepted from required public disclosure under various sections of the act:

1. Questions used in the interview process. Article 6252-17a, § 3(a)(22), test items developed by governmental bodies.
2. Point scores and rank orders . . . [of candidates calculated by] the board, both . . . [by] individual board members and the board [as a whole] Article 6252-17a, § 3(a)(11), intra-agency memoranda.
3. Home addresses, of candidates. Article 6252-17a, § 3(a)(17) and § 3A.
4. Employee evaluations. Article 6252-17a, § 3(a)(11), intra-agency memoranda.
5. School Transcripts. Article 6252-17a, § 3(a)(14) and § 3(a)(2).

We will address in turn each type of information that you assert is excepted from required public disclosure.

You first assert that the questions asked by the promotion board are excepted by section 3(a)(22) of the act, which excepts

curriculum objectives and test items developed by educational institutions that are funded wholly or in part by state revenue and test items developed by licensing agencies or governmental bodies. (Emphasis added.)

You assert that promotion decisions by the promotion board depend to a great extent on answers to questions that are developed by the Institutional Division of the Texas Department of Criminal Justice and that a list of the possible questions is maintained for re-use by future boards interviewing future applicants. We have examined the test questions that you have submitted to us and agree that they fall within the ambit of section 3(a)(22) of the act.

You next assert that the scores achieved by the individual applicants, which are entered by each of the board members on the Applicant Interview Rating Forms, and the Screening/Selection Board Summary, which consolidates the scores of the board members and orders the applicants by rank, are excepted by section 3(a)(11) of the act. That section excepts

inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency.

The test under section 3(a)(11) is whether inter-agency or intra-agency information consists of advice, opinion, and recommendation that is used in the decisional process. Open Records Decision No. 538 (1990). Facts and written observation of facts and events, when such information is severable from advice, opinion, or recommendation cannot be withheld under section 3(a)(11). See generally Open Records Decision No. 213 (1978). We have examined the forms that you have submitted and agree that, on the basis of Open Records Decision No. 538, they may be withheld from disclosure.

You next assert that the home addresses of applicants are excepted from release by sections 3A and 3(a)(17) of the act. Section 3(a)(17) of the act excepts

the home addresses and home telephone numbers of each official and employee and each former official and employee of a governmental body except as otherwise provided by section 3A of this Act, and of peace officers as defined by Article 2.12, Code of Criminal Procedure, 1965, as amended, or by Section 51.212, Texas Education Code.

Section 3A of the act provides that public officials and employees may elect to close public access to their home addresses and telephone numbers. The legislature added section 3A and amended section 3(a)(17) in 1985 in response to decisions by this office that privacy law does not, as a general rule, protect public employees' and officials' home addresses and telephone numbers. Compare Open Records Decision No. 506 (1988) with Open Records Decision Nos. 169 (1977); 123 (1976).

In a prior decision, this office refused to extend the scope of sections 3(a)(17) and 3A. In Open Records Decision No. 455 (1987), this office concluded that sections 3A and 3(a)(17) of the act do not reach the home addresses and telephone numbers of applicants for public employment or of other persons such as probationers. The decision focused on the fact that sections 3A and 3(a)(17) expressly applied to "employee[s]" and "official[s]," not to other groups of people. It is our understanding that the information requested involves employees who are applicants for promotion, rather than persons who are applying for public employment ab initio. If such is the case, then we agree that section 3(a)(17) excepts the home addresses and telephone numbers of the applicants from public disclosure, except as provided therein. Otherwise, the information must be disclosed.

You next assert that letters of recommendation and employee evaluations that are included in the application packets submitted by employee applicants are excepted by section 3(a)(11) of the act, which excepts intra-agency memoranda. We have examined the information that you have submitted and agree that the employee evaluations may be excepted from disclosure. However, we conclude that letters of recommendation that are solicited by an employee applicant and offered to the promotion board do not fall

within section 3(a)(11). Open Records Decision No. 308 (1982) (overruled on other grounds, Open Records Decision No. 579 (1990)). Letters of recommendation that the board solicits, on the other hand, do fall within section 3(a)(11). Open Records Decision No. 466 (1987).

And finally, you assert that school transcripts contained in some applications are excepted by sections 3(a)(2) and 3(a)(14) of the act. Section 3(a)(2) of the act excepts

information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, and transcripts from institutions of higher education maintained in the personnel files of professional public school employees; provided, however, that nothing in this section shall be construed to exempt from disclosure the degree obtained and the curriculum on such transcripts of professional public school employees, and further provided that all information in personnel files of an individual employee within a governmental body is to be made available to that individual employee or his designated representative as is public information under this Act.

Section 3(a)(14) of the act excepts

student records at educational institutions funded wholly, or in part, by state revenue; but such records shall be made available upon request of educational institution personnel, the student involved, that student's parent, legal guardian, or spouse or a person conducting a child abuse investigation required by Section 34.05, Family Code.

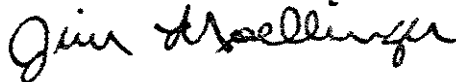
On the basis of Klein Independent School District v. Mattox, 830 F.2d 576 (5th Cir. 1987) and Open Records Decision No. 467 (1987), we conclude that transcripts submitted by applicants, except as provided by section 3(a)(2) of the act, must be released.

We have considered the exceptions you claimed, specifically sections 3(a)(11), 3(a)(22), 3(a)(17) and 3A, and 3(a)(14) and 3(a)(2), and have reviewed the documents at

issue. Previous determinations of this office, Open Records Decision Nos. 538, 506, 467, 466, 455, 308, copies of which are enclosed, resolve your request. The marked portions of the documents are available to the public.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-087.

Yours very truly,



Jim Moellinger
Assistant Attorney General
Opinion Committee

JM/lcd

Ref.: ID# 10328, 10591

Enclosure: Open Records Decision Nos. 538; 506; 467, 466, 455; 308.

cc: Mr. Richard L. Simmons
P. O. Box 204
Tennessee Colony, Texas 75861